

**AMENDMENT TO THE TAUZIN-DINGELL
SUBSTITUTE TO H.R. 851
OFFERED BY MR. MARKEY OF MASSACHUSETTS
[Retransmission and Must Carry]**

Page 4, after line 25, insert the following new sections (and redesignate the succeeding section accordingly):

1 SEC. 4. RETRANSMISSION CONSENT.

2 Section 325 of the Communications Act of 1934 (47
3 U.S.C. 325) is amended—

4 (1) in subsection (b)(2)—

5 (A) by striking subparagraph (B) and in-
6 serting the following:

7 “(B) retransmission of the signal of a television
8 broadcast station outside the station’s local market
9 by a satellite carrier directly to its subscribers for
10 private home viewing, if (i) such station was a
11 superstation on May 1, 1991; (ii) as of July 1,
12 1998, such station was retransmitted by a satellite
13 carrier under the compulsory license of section 119
14 of title 17, United States Code; and (iii) the satellite
15 carrier complies with any network nonduplication,
16 syndicated exclusivity, or sports blackout rules

1 adopted by the pursuant to section 339 of this
2 Act;” and

3 (B) by striking subparagraph (D) and in-
4 serting the following:

5 “(D) retransmission by a cable operator or
6 other multichannel video provider of the signal of a
7 television broadcast station outside the station’s
8 local market, if such signal was obtained from a sat-
9 ellite carrier and (i) the originating station was a
10 superstation on May 1, 1991; and (ii) on December
11 31, 1997, the originating station was a network sta-
12 tion and its signal was retransmitted by a satellite
13 carrier directly for private home viewing.”.

14 (2) by redesignating subsections (c) and (d) as
15 subsections (d) and (e), respectively;

16 (3) by inserting after subsection (b) the follow-
17 ing new subsection:

18 “(c) SATELLITE RETRANSMISSIONS.—

19 “(1) RETRANSMISSION CONSENT REQUIRED.—

20 No satellite carrier shall retransmit the signal of a
21 television broadcast station, or any part thereof,
22 except—

23 “(A) with the express authority of the sta-
24 tion; or

1 “(B) pursuant to section 338, in the case
2 of a station electing, in accordance with this
3 subsection, to assert the right to carriage under
4 such section.

5 “(2) EXCLUSIONS.—The provisions of this sub-
6 section shall not apply to—

7 “(A) retransmission of the signal of a non-
8 commercial television broadcast station;

9 “(B) retransmission of the signal of a tele-
10 vision broadcast station outside the station’s
11 local market by a satellite carrier directly to
12 subscribers if—

13 “(i) such station was a superstation
14 on May 1, 1991; and

15 “(ii) on December 31, 1997, such sta-
16 tion was a network station and its signal
17 was retransmitted by satellite carriers di-
18 rectly to at least 500,000 subscribers;

19 “(C) retransmission of the distant signal of
20 a broadcasting station that is owned or oper-
21 ated by, or affiliated with, a broadcasting net-
22 work directly to a home satellite antenna, if the
23 household receiving the signal is an unserved
24 household;

1 “(D) retransmission by a cable operator or
2 other multichannel video programming distribu-
3 tor (other than by a satellite carrier direct to its
4 subscribers) of the signal of a television broad-
5 cast station outside the station’s local market,
6 if such signal was obtained from a satellite car-
7 rier and—

8 “(i) the originating station was a
9 superstation on May 1, 1991; and

10 “(ii) the originating station was a net-
11 work station on December 31, 1997, and
12 its signal was retransmitted by a satellite
13 carrier directly to subscribers; or

14 “(E) retransmission by a satellite carrier
15 to a subscriber before the effective date of the
16 regulations required by paragraph (3).

17 “(3) PROMULGATION OF THE REGULATIONS.—

18 Within 45 days after the date of enactment of the
19 Save Our Satellites Act of 1999, the Commission
20 shall commence a rulemaking proceeding to revise
21 the regulations governing the exercise by television
22 broadcast stations of the right to grant retrans-
23 mission consent under this subsection, and such
24 other regulations as are necessary to administer the
25 limitation contained in paragraph (2). The Commis-

1 sion shall complete all actions necessary to prescribe
2 such regulations within one year after such date of
3 enactment. Such regulations shall—

4 “(A) establish election time periods that
5 correspond with those regulations adopted
6 under section 325(b)(3)(B) of the Communica-
7 tions Act of 1934;

8 “(B) prohibit television broadcast stations
9 that provide retransmission consent from en-
10 gaging in practices, understandings, arrange-
11 ments and activities, including exclusive con-
12 tracts for carriage that prevent a satellite car-
13 rier from obtaining retransmission consent from
14 such stations;

15 “(C) require television broadcast stations
16 that provide retransmission consent to do so on
17 nondiscriminatory financial terms and condi-
18 tions, and with respect to nonfinancial terms
19 and conditions, take into account whether dif-
20 ferent types of multichannel video programming
21 distributors can or cannot provide all of the
22 same types of nonfinancial consideration, if any
23 is required, to such stations; and

1 “(D) establish a mechanism for resolution
2 of disputes concerning the provisions of this
3 subsection, including—

4 “(i) expedited review of any complaint
5 made pursuant to this subsection; and

6 “(ii) procedures for the Commission
7 to collect such data, including the right to
8 obtain copies of all contracts and docu-
9 ments reflecting arrangements and under-
10 standings alleged to violate this subsection,
11 as the Commission requires to carry out
12 the provisions of this subsection.

13 “(4) DEFINITIONS.—For purposes of this sub-
14 section:

15 “(A) TELEVISION BROADCAST STATION.—
16 The term ‘television broadcast station’ means
17 an over-the-air commercial or noncommercial
18 television broadcast station licensed by the Fed-
19 eral Communications Commission under sub-
20 part E of part 73 of title 47, Code of Federal
21 Regulations, except that such term does not in-
22 clude a low-power or translator television broad-
23 cast station.

24 “(B) BROADCASTING NETWORK.—The
25 term ‘broadcasting network’ means a television

1 network in the United States which offers an
2 interconnected program service on a regular
3 basis for 15 or more hours per week to at least
4 25 affiliated broadcast stations in 10 or more
5 States.

6 “(C) NETWORK STATION.—The term ‘net-
7 work station’ means a television broadcast sta-
8 tion that is owned or operated by, or affiliated
9 with, a broadcasting network.

10 “(5) LOCAL MARKET.—

11 “(A) In the case of both commercial and
12 noncommercial television broadcast stations, the
13 term ‘local market’ means the designated mar-
14 ket area in which a station is located.

15 “(B) In the case of a commercial television
16 broadcast station, all commercial television
17 broadcast stations licensed to a community
18 within the same designated market area are
19 within the same local market.

20 “(C) In the case of a noncommercial edu-
21 cational television broadcast station, the market
22 includes any station that is licensed to a com-
23 munity within the same designated market area
24 as the noncommercial educational television
25 broadcast station.

1 “(6) DESIGNATED MARKET AREA.—The term
2 ‘designated market area’ means a designated market
3 area, as determined by Nielsen Media Research and
4 published in the DMA Market and Demographic Re-
5 port.”.

6 **SEC. 5. MUST-CARRY FOR SATELLITE CARRIERS RE-**
7 **TRANSMITTING TELEVISION BROADCAST SIG-**
8 **NALS.**

9 Title III of the Communications Act of 1934 is
10 amended by inserting after section 337 (as added by sec-
11 tion 2 of this Act) the following new section:

12 **“SEC. 338. CARRIAGE OF LOCAL TELEVISION SIGNALS BY**
13 **SATELLITE CARRIERS.**

14 “(a) CARRIAGE OBLIGATIONS.—

15 “(1) IN GENERAL.—Subject to the limitations
16 of subparagraph (2), each satellite carrier providing
17 secondary transmissions to subscribers located with-
18 in the local market of a television broadcast station
19 of a primary transmission made by that station shall
20 carry upon request all television broadcast stations
21 located within that local market, subject to section
22 325(c), by retransmitting the signal or signals of
23 such station that are identified by Commission regu-
24 lations for purposes of this subsection.

25 “(2) LIMITATIONS.—

1 “(A) Until the date as established in sub-
2 paragraph (B), each satellite carrier providing
3 secondary transmissions to subscribers located
4 within the local market of a television broadcast
5 station of a primary transmission made by that
6 station shall carry a minimum of 5 local tele-
7 vision broadcast stations in that local market at
8 least one of which shall be a noncommercial
9 educational broadcast station in that market.

10 “(B) No satellite carrier shall be required
11 to carry more than the number of local tele-
12 vision broadcast stations specified in subpara-
13 graph (A) until January 1, 2002.

14 “(C) A satellite carrier providing secondary
15 transmissions to subscribers pursuant to sub-
16 paragraph (A) shall not be required to carry a
17 greater number of signals of local broadcast
18 stations within a local market than one-third of
19 the usable activated channels of such carrier
20 that are used in providing video programming
21 to subscribers in such local market.

22 “(D) Carriage of local broadcast stations
23 within the local market shall be at the discre-
24 tion of the satellite carrier, subject to the mini-

1 mum requirement established in subparagraph
2 (A) and the requirements of section 325(c).

3 “(b) CONTENT TO BE CARRIED.—

4 “(1) VIDEO, AUDIO, AND CLOSED CAPTION.—A
5 satellite carrier providing secondary transmissions to
6 subscribers located within the local market of a tele-
7 vision broadcast station of a primary transmission
8 made by that station shall carry in its entirety, the
9 primary video, accompanying audio, line 21 closed
10 caption transmission, and program ratings transmit-
11 ted pursuant to section 303(w)(2) of each of the
12 local commercial television stations so provided by
13 the carrier and, to the extent technically feasible,
14 program-related material carried in the vertical
15 blanking interval or on subcarriers. Retransmission
16 of other material in the vertical blanking interval or
17 other nonprogram-related material (including tele-
18 text and other subscription and advertiser-supported
19 information services) shall be at the discretion of the
20 satellite carrier. Where appropriate and feasible, sat-
21 ellite carriers may delete signal enhancements, such
22 as ghost-canceling, from the broadcast signal and
23 employ other enhancements.

24 “(2) PROGRAM SCHEDULE.—Except as other-
25 wise provided in regulations of the Commission, the

1 satellite carrier shall carry the entirety of the pro-
2 gram schedule of any television station transmitted
3 as described in paragraph (1) by the satellite carrier
4 unless carriage of specific programming is prohib-
5 ited, and other programming authorized to be sub-
6 stituted, under section 76.67 or subpart F of part
7 76 of title 47, Code of Federal Regulations (as in ef-
8 fect on January 1, 1991), or any successor regula-
9 tions thereto.

10 “(c) DUPLICATION NOT REQUIRED.—Notwithstand-
11 ing subsection (a), a satellite carrier shall not be required
12 to carry upon request the signal of any local television
13 broadcast station that substantially duplicates the signal
14 of another television broadcast station which is secondarily
15 transmitted by the satellite carrier within the same local
16 market, or to carry upon request the signals of more than
17 1 local television broadcast station in a single local market
18 that is affiliated with a particular broadcast network (as
19 the term is defined by regulation).

20 “(d) CHANNEL POSITIONING.—No satellite carrier
21 shall be required to provide the signal of a local television
22 broadcast station to subscribers in that station’s local
23 market on any particular channel number or to provide
24 the signals in any particular order, except that the satellite
25 carrier shall retransmit the signal of the local television

1 broadcast stations to subscribers in the stations' local
2 market on contiguous channels and in a nondiscriminatory
3 manner on any navigational device, on-screen program
4 guide, or menu.

5 “(e) COMPENSATION FOR CARRIAGE.—A satellite
6 carrier shall not accept or request monetary payment or
7 other valuable consideration in exchange either for car-
8 riage of local television broadcast stations in fulfillment
9 of the requirements of this section, except that any such
10 station is required to bear the costs associated with deliv-
11 ering a good quality signal to the designated uplink facility
12 of the satellite carrier.

13 “(f) REGULATIONS BY COMMISSION.—Within 180
14 days after the effective date of this section, the Commis-
15 sion shall, following a rulemaking proceeding, issue regula-
16 tions implementing this section.

17 “(g) REMEDIES.—

18 “(1) COMPLAINTS BY BROADCAST STATIONS.—
19 Whenever a local television broadcast station believes
20 that a satellite carrier has failed to meet its obliga-
21 tions under this subsection, such station shall notify
22 the carrier, in writing, of the alleged failure and
23 identify its reasons for believing that the satellite
24 carrier is obligated to carry upon request the signal
25 of such station or has otherwise failed to comply

1 with other requirements of this subsection. The sat-
2 ellite carrier shall, within 30 days of such written
3 notification, respond in writing to such notification
4 and either begin carrying the signal of such station
5 in accordance with the terms requested or state its
6 reasons for believing that it is not obligated to carry
7 such signal or is in compliance with other require-
8 ments of this subsection, as the case may be. A local
9 television broadcast station that is denied carriage in
10 accordance with this subsection by a satellite carrier
11 or is otherwise harmed by a response by a satellite
12 carrier that it is in compliance with other require-
13 ments of this subsection may obtain review of such
14 denial or response by filing a complaint with the
15 Commission. Such complaint shall allege the manner
16 in which such satellite carrier has failed to meet its
17 obligations and the basis for such allegations.

18 “(2) OPPORTUNITY TO RESPOND.—The Com-
19 mission shall afford the satellite carrier against
20 which a complaint is filed under subparagraph (A)
21 an opportunity to present data and arguments to es-
22 tablish that there has been no failure to meet its ob-
23 ligations under this subsection.

24 “(3) REMEDIAL ACTIONS; DISMISSAL.—Within
25 120 days after the date a complaint is filed under

1 subparagraph (A), the Commission shall determine
2 whether the satellite carrier has met its obligations
3 under this chapter. If the Commission determines
4 that the satellite carrier has failed to meet such obli-
5 gations, the Commission shall order the satellite car-
6 rier, in the case of an obligation to carry a station,
7 to begin carriage of the station and to continue such
8 carriage for at least 12 months, or, in the case of
9 the failure to meet other obligations under this sub-
10 section, shall take other appropriate remedial action.
11 If the Commission determines that the satellite car-
12 rier has fully met the requirements of this chapter,
13 the Commission shall dismiss the complaint.

14 “(h) DEFINITIONS.—As used in this section:

15 “(1) DESIGNATED MARKET AREA.—The term
16 ‘designated market area’ means a designated market
17 area, as determined by the Nielsen Media Research
18 and published in the DMA Market and Demographic
19 Report.

20 “(2) DISTRIBUTOR.—The term ‘distributor’
21 means an entity which contracts to distribute sec-
22 ondary transmissions from a satellite carrier and, ei-
23 ther as a single channel or in a package with other
24 programming, provides the secondary transmission

1 either directly to individual subscribers or indirectly
2 through other program distribution entities.

3 “(3) LOCAL MARKET.—

4 “(A) In the case of both commercial and
5 noncommercial television broadcast stations, the
6 term ‘local market’ means the designated mar-
7 ket area in which a station is located.

8 “(B) In the case of a commercial television
9 broadcast station, all commercial television
10 broadcast stations licensed to a community
11 within the same designated market area are
12 within the same local market.

13 “(C) In the case of a noncommercial edu-
14 cational television broadcast station, the market
15 includes any station that is licensed to a com-
16 munity within the same designated market area
17 as the noncommercial educational television
18 broadcast station.

19 “(4) DESIGNATED UPLINK FACILITY.—The
20 term ‘designated uplink facility’ means the reception
21 point in each local market which a satellite carrier
22 designates for delivery of the signal of the station
23 for purposes of retransmission. The designation of
24 such facility by a satellite carrier shall not be used

1 to undermine or evade the carriage requirements im-
2 posed by this chapter.

3 “(5) SUBSCRIBER.—The term ‘subscriber’
4 means an entity that receives a secondary trans-
5 mission service by means of a secondary trans-
6 mission from a satellite and pays a fee for the serv-
7 ice, directly or indirectly, to the satellite carrier or
8 to a distributor.

9 “(6) TELEVISION BROADCAST STATION.—The
10 term ‘television broadcast station’ means an over-
11 the-air commercial or noncommercial television
12 broadcast station licensed by the Federal Commu-
13 nications Commission under subpart E of part 73 of
14 title 47, Code of Federal Regulations, except that
15 such term does not include a low-power or translator
16 television broadcast station.

17 “(7) SATELLITE CARRIER, ETC.—The terms
18 ‘satellite carrier’, ‘secondary transmission’, and
19 ‘unserved household’ have the meanings given such
20 terms in section 119(d) of title 17, United States
21 Code.”.

1 **SEC. 6. NETWORK NONDUPLICATION, SYNDICATED EXCLU-**
2 **SIVITY, AND SPORTS BLACKOUT.**

3 Title III of the Communications Act of 1934 is
4 amended by inserting after section 338 (as added by sec-
5 tion 5 of this Act) the following new section:

6 **“SEC. 339. APPLICATION OF NETWORK NONDUPLICATION,**
7 **SYNDICATED EXCLUSIVITY, AND SPORTS**
8 **BLACKOUT RULES TO CARRIAGE OF DISTANT**
9 **SIGNALS BY SATELLITE CARRIERS.**

10 “Within 45 days after the date of enactment of this
11 section, the Federal Communications Commission shall
12 commence a single rulemaking proceeding to establish reg-
13 ulations that apply network nonduplication protection,
14 syndicated exclusivity protection, and sports blackout pro-
15 tection to the retransmission of broadcast signals by sat-
16 ellite carriers to subscribers for private home viewing. To
17 the extent possible, such regulations shall provide the
18 same degree of protection against retransmission of broad-
19 cast signals as is provided by the existing network non-
20 duplication (47 C.F.R. 76.92), syndicated exclusivity (47
21 C.F.R. 151), and sports blackout (47 C.F.R. 76.67) rules
22 applicable to cable television systems. The Commission
23 shall complete all actions necessary to prescribe regula-
24 tions required by this section so that the regulations shall
25 become effective within 1 year after the date of enactment
26 of this section.”.

1 **SEC. 7. SUPERSTATION EXEMPTION.**

2 Section 119(a) of title 17, United States Code, is
3 amended—

4 (1) in paragraph (2)(B), by striking “The stat-
5 utory” and inserting “Except as provided in para-
6 graph (5)(E) of this subsection, the statutory”; and

7 (2) in paragraph (5), by adding at the end
8 thereof the following:

9 “(E) EXCEPTION.—The secondary trans-
10 mission by a satellite carrier of a primary
11 transmission made by a network station to sub-
12 scribers who do not reside in unserved house-
13 holds shall not be an act of infringement if—

14 “(i) such station was a superstation
15 on May 1, 1991; and

16 “(ii) as of July 1, 1998, such a sta-
17 tion was retransmitted by satellite carriers
18 under the compulsory license of this sec-
19 tion.”.